

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Sections 716 and 717 of)	CG Docket No. 10-213
the Communications Act of 1934, as Enacted)	
by the Twenty-First Century Communications)	
and Video Accessibility Act of 2010)	
)	
Amendments to the Commission's Rules)	WT Docket No. 96-198
Implementing Sections 255 and 251(a)(2) of)	
the Communications Act of 1934, as Enacted)	
by the Telecommunications Act of 1996)	
)	
In the Matter of Accessible Mobile Phone)	CG Docket No. 10-145
Options for People who are Blind, Deaf-)	
Blind, or Have Low Vision)	

**PETITION FOR PARTIAL RECONSIDERATION AND CLARIFICATION
OF MOTOROLA SOLUTIONS, INC.**

Motorola Solutions, Inc. (“Motorola Solutions”), pursuant to Section 1.429 of the Commission’s Rules,¹ hereby submits this Petition for Partial Reconsideration and Clarification of the Federal Communications Commission’s (“Commission”) *Second Report and Order*² implementing Section 718 of the Communications Act of 1934 (“Act”),³ which was added by Section 104 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).⁴ In the *Order*, the Commission adopted rules implementing another important portion of the CVAA. Motorola Solutions files this petition to seek reconsideration and

¹ 47 C.F.R. § 1.429.

² Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; *et al.*, CG Docket Nos. 10-213, 10-145, WT Docket No. 96-198, *Second Report and Order*, 28 FCC Rcd 5957 (2013) (“*Order*”).

³ 47 U.S.C. § 619.

⁴ Pub. L. No. 111-260, 124 Stat. 2751, § 104 (2010) (“CVAA”).

clarification of discrete aspects of the *Order* related to public safety and enterprise equipment that incorporates the ability to communicate over commercial cellular networks. Motorola Solutions respectfully requests the Commission reconsider its decision not to identify any exemptions to the newly-adopted rules. In the alternative, Motorola Solutions requests clarification regarding the process for seeking a waiver of the Commission's rules implementing Section 718.

I. THE COMMISSION SHOULD EXEMPT PUBLIC SAFETY AND ENTERPRISE DEVICES FROM ITS SECTION 718 RULES.

Motorola Solutions respectfully requests the Commission reconsider its decision in the *Order* and craft a limited exemption from its rules implementing Section 718 for public safety and enterprise devices intended for use in private networks that have ancillary capability to communicate over commercial cellular networks consistent with its treatment of such devices under Section 716. These devices are not marketed to consumers and are not primarily intended for use over public communications networks. As such, applying Section 718 to them would not serve the public interest. Exempting these devices from the scope of the Commission's rules also would be consistent with policy determinations made by the Commission in other contexts and within the Commission's legal authority.

In most respects the Commission adopted rules implementing Section 718 that are consistent with the regulatory framework applied to advanced communications services rules adopted to implement Section 716 of the Act, consistent with the requests of various commenters on the record.⁵ Nevertheless, the Commission declined to adopt any exemptions or waiver

⁵ See, e.g., Comments of the Telecommunications Industry Association at 4-6, CG Docket Nos. 10-145,10-213, WT Docket No. 96-198 (filed Feb. 13, 2012); Reply Comments of the Consumer Electronics Association at 5-7, CG Docket Nos. 10-145,10-213, WT Docket No. 96-198 (filed Mar. 14, 2012); Reply Comments of T-Mobile USA, Inc. at 4-5, CG Docket Nos. 10-145,10-213, WT Docket No. 96-198 (filed Mar. 14, 2012).

provisions similar to those adopted in the Section 716 context.⁶ The Commission stated that because the statutory text of Section 718 did not specifically provide for exemptions or special waiver authority, it did not find sufficient basis to establish them.⁷

The Commission should reconsider the decision not to adopt any exemptions in order to address the anomaly of certain specialized public safety and enterprise devices, which are not marketed for consumer use, nonetheless being subject to the new Section 718 rules because they include ancillary ability to connect to commercial cellular networks. The fundamental purpose of the CVAA is to ensure that consumers have access to emerging IP-based networks and devices. This consumer focus is evident throughout the provisions of the law.⁸ Public safety and enterprise devices are specially-designed for particular industries, are not offered by commercial carriers, and are not intended for consumer use. As such, making them subject to the Commission's Section 718 rules will not substantially further the CVAA's goal of promoting communications accessibility for consumers with disabilities.

Imposing new accessibility requirements on these devices could raise the costs and complexity of public safety communications systems development. Additionally, because the primary use for these devices is on private radio systems, with ancillary commercial network connectivity available as an additional feature, if a manufacturer cannot efficiently comply with the new requirement by the effective date, the manufacturer might choose to remove the commercial network functionality from future devices rather than face potential liability for violating the Commission's rule. In this worst-case scenario, a public safety or enterprise user

⁶ *Order*, ¶ 27.

⁷ *Id.*

⁸ *See, e.g.*, 47 U.S.C. § 619(b)(2) (allowing manufacturers to satisfy the Section 718 requirements by using third party applications or peripherals “available to the consumer at nominal cost”) (emphasis added).

would be denied valued functionality even though no consumer would have benefited from the accessibility feature had it been provided.

In light of the above, the Commission should reconsider its decision not to adopt any exemptions and, on reconsideration, make clear that public safety and enterprise devices are not subject to the Section 718 rules. This would be more efficient, in terms both of the Commission's resources and those of the public safety communications community. Moreover, adopting such an exemption would be consistent with Commission action in other disability access contexts. For example, the exemption could be based on the Section 716 exemption for customized equipment, which the Commission has interpreted as covering public safety and other customized equipment offered to business and other enterprise customers only.⁹

The Commission has ample flexibility to adopt the exemption for public safety and enterprise devices requested here pursuant to its general authority under the Communications Act to make rules and regulations "as may be necessary in the execution of its functions."¹⁰ The fact that exemptions are expressly addressed in the text of Section 716 and not in Section 718 need not prevent the Commission from adopting appropriately limited exemptions that are in the public interest. The Commission regularly uses its regulatory authority to implement statutory provisions through rules that are more detailed than the statutory text. Filling such gaps in legislation is a key role of a Federal agency in the U.S. regulatory system.¹¹

⁹ Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; *et al.*, CG Docket Nos. 10-145, 10-213, WT Docket No. 96-198, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 14557, ¶¶ 171-172 (2011) ("ACS Report and Order").

¹⁰ 47 U.S.C. § 154(i).

¹¹ See generally *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

Indeed, in the interest of implementing the CVAA, the Commission takes several steps in this *Order* that are not expressly contemplated by the text of Section 718. At the most basic level, while Section 716 specifically instructs the Commission to adopt implementing regulations,¹² Section 718 does not. Yet the Commission—appropriately—adopts rules implementing Section 718 in the *Order*. Additionally, Section 716 calls on the Commission to include performance objectives to ensure accessibility and usability,¹³ while Section 718 is silent on the point, but the Commission decides in the *Order* to apply the performance objectives contained in Section 14.21 of its rules to entities covered by 718 and to require such entities to consider those objectives early in the design phase of their products.¹⁴ Adopting the requested exemption here would be consistent with the Commission’s other actions in the *Order* and also a natural extension of “the tenet of statutory construction that requires statutory language be read in the context of the larger statutory scheme,” which the Commission has embraced in its CVAA implementation.¹⁵ The Commission should not allow asymmetry between these two provisions to prevent it from adopting necessary and appropriate regulations.

II. THE COMMISSION SHOULD CLARIFY THE PROCESS BY WHICH MANUFACTURERS CAN SEEK WAIVER OF THE SECTION 718 RULES.

In declining to adopt any exceptions to its Section 718 rules in the *Order*, the Commission noted that covered entities could petition for a waiver of the new requirements under the Commission’s waiver rules.¹⁶ The Commission concluded that in order to waive a rule implementing Section 718, the Commission would also have to grant forbearance from the

¹² 47 U.S.C. § 617(e).

¹³ *Id.*, § 617(e)(1)(A).

¹⁴ *See Order*, ¶ 20; *id.*, App. B (adopting new Section 14.60 of the Commission’s rules).

¹⁵ *See Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, *Notice of Proposed Rulemaking*, FCC 13-77, ¶17 (rel. May 30, 2013).

¹⁶ *Order*, ¶ 27.

underlying statutory requirement.¹⁷ If the Commission does not adopt the limited exemption for public safety and enterprise devices described above, it should clarify the process by which manufacturers can seek waiver of the Section 718 rules.

Motorola Solutions notes that only telecommunications carriers are able to file petitions for forbearance under the Section 10 of the Communications Act, and therefore an equipment manufacturer subject to Section 718 would be unable to file a petition for forbearance of that requirement.¹⁸ However, under the Act, forbearance is a mandatory obligation of the Commission where it determines that the prerequisites for forbearance are met. As such, Motorola Solutions understands the Commission to suggest in the *Order* that should the Commission conclude that a manufacturer's request for waiver of its Section 718 rules should be granted, it would also consider, as a matter of course on its own motion, whether forbearance from application of Section 718 the relevant telecommunications service to extent necessary to effect the waiver is warranted. Motorola Solutions respectfully requests that the Commission confirm this understanding.

There is some overlap between the waiver standard and the Commission's forbearance analysis. The Commission may waive any provisions of its rules on a showing of good cause and that the facts make compliance inconsistent with the public interest.¹⁹ There are three conditions that must be met to trigger mandatory forbearance under the Act. First, enforcement of the statutory provision must not be necessary to ensure that "the charges, practices, classifications, or regulations by, for, or in connection with" the telecommunications carrier or

¹⁷ *Id.*, n. 119.

¹⁸ 47 U.S.C. § 160(c).

¹⁹ 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

service “are just and reasonable and are not unjustly or unreasonably discriminatory.”²⁰ Second, enforcement of the provision must not be necessary for the protection of consumers.²¹ And finally, forbearance from applying the provision must be consistent with the public interest.²²

There will be some situations in which a request for waiver of the Internet browser accessibility rules also would satisfy the forbearance standards. Because of this dynamic, Motorola Solutions expects that for some classes of device, a properly supported waiver petition would necessarily trigger a determination that forbearance is required, and in those cases the Commission would forbear from application of the statutory provision to the waiver recipient. In light of the inability of manufacturers to file petitions for forbearance under the Communications Act, such a step is essential to ensuring a legitimate opportunity to seek waiver. Motorola Solutions requests clarification of this process and confirmation of that understanding.

²⁰ 47 U.S.C. § 160(a)(1).

²¹ *Id.*, § 160(a)(2).

²² *Id.*, § 160(a)(3).

III. CONCLUSION

For the foregoing reasons, Motorola Solutions respectfully requests that the Commission reconsider its decision not to adopt any exemptions to its new Section 718 rules and instead exclude public safety and enterprise devices from the applicability of these provisions. Additionally, Motorola Solutions requests that the Commission clarify the procedures governing manufacturer requests for waiver of the new rules.

Respectfully submitted,

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